The Infliction of Severe Poverty as the Perfect Crime

ELIZABETH ASHFORD
BIOGRAPHY

Elizabeth Ashford is senior lecturer in moral philosophy at the University of St Andrews. She did her MA at UNC Chapel Hill and her BA and DPhil at Oxford University, and was awarded her DPhil in 2002. Her main research interests are in moral and political philosophy. She has recently finished a contribution to UNESCO Volume I, Freedom from Poverty as a Human Right (OUP forthcoming), and her current research project is to develop a book on utilitarian and Kantian conceptions of impartiality and of rights. During the academic year 2005-6 she was a Visiting Faculty Fellow in Ethics at the Harvard University Edmond J. Safra Center for Ethics, and the following summer she was an H.L.A. Hart Visiting Fellow at the Oxford University Centre for Ethics and the Philosophy of Law.

EDITORIAL NOTE

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AS THE PERFECT CRIME

A CENTRAL ASPECT of the moral force of fundamental human rights is that they impose stringent correlative duties that are rightfully enforced, non-fulfilment of which constitutes a human rights violation. I take fundamental human rights to be rock-bottom moral claims of paramount moral importance, held by every human being simply in virtue of their moral status as persons, against treatment that is incompatible with minimally adequate recognition of that moral status. As Henry Shue puts it, they constitute “everyone’s minimum reasonable demand upon the rest of humanity” (Shue 1996, p. 19).

Fundamental human rights demarcate a moral floor beneath which no-one should be allowed to sink. Human rights violations constitute the kind of treatment that is liable to blight or destroy persons’ lives, or that relegates them to an inferior moral status, or both. The notion of a human rights violation signifies treatment that is morally intolerable, both in the sense that it is beyond the pale of civilised behaviour and has moved into the realm of the barbarous, and in the sense it ought not be tolerated; persons can justifiably demand not be treated in this way, and this demand is rightfully juridically enforced. The juridical enforcement of duties not to violate human rights is crucial to protecting and empowering those who would otherwise be utterly vulnerable to unjust treatment, and to the official public affirmation of persons’ universal moral status.

A salient feature of contemporary human rights discourse is that ongoing affirmations of a fundamental human right to subsistence have gone hand in hand with an ongoing failure to classify deprivations of the means of subsistence as a human rights violation, or to specify and enforce global and domestic rules compliance with which would ensure universal enjoyment of the right.

The term “subsistence” refers to the basic necessities of life: clean water, shelter, a minimally nutritionally adequate diet and minimum preventative health care. Accordingly, the right to subsistence is not enjoyed by those who fall below the international poverty line, defined as the line beneath which “a minimally nutritionally adequate diet plus essential non-food requirements are not affordable”. However, the persistence of this kind of life-threatening severe poverty is not generally classified as a human rights violation. (For ease of exposition, I will use the phrase “severe poverty” to refer to an inability to afford or generate the means of subsistence.) Moreover, this classification is not readily accommodated by either of the
two dominant accounts of human rights violations, the interactional and institutional accounts.

Current international law takes the addressee of socio-economic human rights including the right to subsistence, with sole responsibility for respecting such rights and sole accountability for their violation, to be the right-holders’ own government. The role of the international community is taken to be that of enforcing or facilitate fulfilment of this primary duty to respect the right, and thereby protect right-holders against violations perpetrated by their own governments. It is thus positioned in a remedial, back-up role.

It should be noted that this very framing seems to preclude ex ante the possibility that the international community might share responsibility for actually violating the right to subsistence of the global poor (and of future generations, such as through anthropogenic climate change and the pollution of scarce water supplies). One striking feature of this framing is that it lacks historical depth. Severe poverty is embedded in enduring social structures, and every country now burdened with severe poverty had a history of being subjected to severe injustice by colonial powers. Nevertheless, as Mutua Makau notes, the UNDHR did not recognise that at the time of its writing “most of the global South was under European colonial rule” (Makau 2008, p. 31).

Prior to decolonisation, there was a rising tide of voices from colonised countries to a share of the riches of empire. Moreover, at time of decolonisation, it was acknowledged that these countries lacked the social institutions and resources to secure universal fulfillment of basic socio-economic rights, including the right to subsistence, among their citizens. But instead of inferring that these rights imposed rectificatory duties on former colonial powers, to help get the newly decolonised countries on their feet after a prolonged period of colonial plunder, the rights were in effect watered down; in view of limited resources internal to poor countries they were understood as progressively realisable. While the international community is held to be under a remedial responsibility to offer assistance, this is vaguely worded, and far from being a peremptory duty of justice non-fulfilment of which constitutes a human rights violation.

Insofar as there have been recent moves to elaborate a human rights approach to poverty alleviation, they are directed at guiding the behaviour and priorities of right-holders’ own governments. One such move is to define a set of minimum core obligations on governments. Since responsibility for fulfilling these minimum core obligations is confined to right-holders’ own governments, feasibility constraints severely restrict the purview of these obligations.
Another striking aspect of current international law is that in positioning the international community in a remedial role, it does not consider - or even readily accommodate - the possibility that current features of global social institutions and practices might be actively contributing to the incidence of severe poverty. While there has been an important recent move towards acknowledging the human rights responsibilities of multi-national organisations, with UN Guiding Principles on Business and Human Rights, proposed by John Ruggee, it remains the case that they are not legally binding.

A notable exception to the reluctance to classify the persistence of severe poverty is Thomas Pogge. He argues that there is a coercively imposed global institutional order the operation of which is responsible for the infliction of most existing severe poverty, and concludes that this constitutes a massive human rights violation and crime against humanity. His argument, however, has been enormously contentious. He offers a top-down, institutional analysis of responsibility for this violation, according to which direct responsibility for it is confined to official agents of that global institutional order. The rationale for this that most severe poverty can be traced back to policy decisions these agents knowingly make and coercively impose that predictably inflict severe poverty on a vast number. However, the attempt to identify policy decisions knowingly made by official agents of a global institutional order as responsible for the infliction of most existing severe poverty is inevitably hugely controversial. As I shall argue, the problem more plausibly lies principally with the weakness of structures of global rule setting and organization, and the absence of coordinated global regulations and global norm enforcement mechanisms that would protect the global poor against the devastating combined effect of current global economic interaction.

Nevertheless, while Pogge’s claim that the operation of a coercive global institutional order is responsible for the infliction of most existing severe poverty is highly controversial, there is widespread agreement that the root causes of severe poverty are not plausibly solely internal to poor countries themselves; the domestic poverty thesis is itself an extreme and widely discredited claim. Turning to the positive duties imposed by the right to subsistence, given the overall level of global wealth and the extremity of the inequality of its current distribution, it is well within our human capacity to avoid the infliction of severe poverty under feasible alternative global and domestic socio-economic and legal structures.

I argue here that neither of the two main accounts of human rights violations, the interactional and institutional, can accommodate the complexity of the causal chains that result in subsistence deprivations.
For this reason, neither can readily classify the deprivations as a human rights violation. However, an adequate account of human rights should acknowledge a category of structural human rights violations and should classify severe poverty as a structural violation.

By the term “structure” I mean any patterned behaviour; there is no assumption that the patterns of behaviour that can be traced back to specific policy decisions made intentionally by official agents of authoritative decision-making structures and coercively imposed that are in themselves describable as inflicting severe poverty. I offer an evolutionary explanation of the norms and rules that structure behaviour in a way that predictably results in severe poverty, in terms of the selection and staying power of certain norms and the absence of others, which highlights a marked absence of attention to the combined effect of these structures on the global poor. As I contend, minimally adequate recognition of the moral value of persons’ lives imposes on the rest of humanity a shared duty of basic justice to scrutinise that combined effect and introduce coordinated global regulations that would restructure behaviour in a way that would avoid this harm. Ongoing shared failure to do so itself constitutes a structure violation, that amounts to the discarding of the lives that are blighted or destroyed by severe poverty as a result. I thereby aim to defend some of Pogge’s core claims and insights, while avoiding the problematic aspects of his argument.

In analysing the notion of a human rights violation, there are two dangers to be avoided. On the one hand, it is important to avoid watering down the special moral force of the concept. On the other hand, it is also important to be aware that our traditional conception of a violation might reflect moral blindspots. In particular, in it important to avoid conceiving human rights violations in a way that would arbitrarily restrict the applicability of the concept to certain social contexts, and thus rule out *ex ante* its applicability to some of the gravest and most prevalent contemporary threats to persons’ basic interests, that are the combined effect of the interaction of a vast number of agents round the globe. With regard to the right to subsistence, we should be sensitive to ways in which persons are deprived of the means of subsistence not through blatant direct plunder and pillage (i.e interactional violations), or through laws that individually inflict severe poverty (i.e. institutional violations), but through more subtle mechanisms, including legal loopholes or a sheer absence of regulations.

With these two dangers in mind, I offer two arguments in defence of the claim that subsistence deprivations constitute a structural violation, that appeal only to morally minimal and uncontentious assumptions. The first
argument appeals to the internal inconsistency of acknowledging a human right to subsistence without acknowledging subsistence deprivations as a human rights violation, and without specifying and enforcing regulations compliance with which would avoid such deprivations. I argue that a set of norms and rules that fail to recognise as a violation patterns of behaviour that predictably deprive persons of the means of subsistence, and fail to implement regulations that prohibit this, pay mere lip-service to the right to subsistence and are incompatible with genuine acknowledgement of the right.

My second line of argument is that failure to classify as a violation structures that result in subsistence deprivations is inconsistent with the normative core of fundamental human rights, and with the two main accounts of their role, as protecting persons’ basic interests against standard threats and as publically and officially affirming persons’ equal basic moral worth.

The principal juridical implication of recognition of a structural violation is that it poses a deep moral challenge to the moral legitimacy of existing legal structures themselves, insofar as they have failed to adequately recognise a fundamental human right. The notion of liability that is principally relevant is not that of liability to condemnation and punishment (which singles out particular violators and is backwards-looking), but that of shared liability to the economic cost of the measures needed to prevent a violation. It is therefore proactive and forward-looking. This model of liability for a structural violation develops some important recent moves in international legal theory.

Part one briefly analyses the interactional and institutional accounts of human rights violations and their inapplicability to the persistence of severe poverty, in sections 1 and 2 respectively. Part 2 defends the notion of a structural human rights violation and argues that severe poverty constitutes a structural violation. Section 3 briefly analyses the structural underpinnings of severe poverty, and section 4 offers an evolutionary analysis of these patterns which highlights certain morally important features of them. Section 5 appeals to the internal inconsistency of affirming a fundamental human right to subsistence, without acknowledging as a violation ongoing patterns of behaviour that predictably and avoidably result in deprivations of subsistence, and without implementing regulations that prohibit such deprivations. Section 6 argues that failure to acknowledge a category of structural violations is inconsistent with the moral claim at the core of fundamental human rights, and with each of the two main accounts that have been given of the role of fundamental human rights, the protection of persons’ basic interests against standard threats,
and the affirmation of person’s universal moral status. Section 7 briefly sketches the relevant notion of liability.

I. THE INAPPLICABILITY OF THE INTERACTIONAL AND INSTITUTIONAL ACCOUNTS OF HUMAN RIGHTS VIOLATIONS

1. The interactional account

Thomas Pogge coins this distinction, which he takes to be exhaustive. (I will argue that we need a third category, that of structural violations.) The interactional account takes the role of human rights to be that of governing persons’ direct interactions with one another, and prohibiting the direct infliction of harm by a particular agent against a particular victim. Paradigm violations involve the direct infliction of severe physical harm (torture, arbitrary killing and so on).

In the case of the right to subsistence, an interactional violation involves one agent’s plundering or destroying a particular victim’s means of subsistence. However, subsistence deprivations rarely arise from a particular agent’s plundering or destroying a particular individual’s means of subsistence, and the harm is the combined effect of numerous structures, activities and practices involving the behaviour of a vast number of agents while plunder plays a central role in the structural underpinnings of severe poverty (ref Basu), it does not generally take an interactional form. The causal chains are usually far more complex. The plunder involves complex large-scale processes under which world’s resources come to be partitioned and possessed by a small fraction of the world’s population, while the global poor are deprived of access to even enough resources for subsistence. There is generally no one to one link between any particular agent’s behaviour and a particular victim’s being deprived of the means of subsistence. Similarly, the physical destruction or degradation of persons’ means of subsistence (such as access to fertile land and uncontaminated drinking water) is generally the combined effect of the activities of a vast number of agents.

The obvious alternative is the institutional account, to which I now turn.

2. The institutional account

Institutional accounts of human rights take them to be claims against coercively imposed social institutions. I begin with current international law, and then turn to Pogge’s institutional analysis.
2i. Current international law

Current international law takes human rights to be claims principally against right-holders’ own governments. It takes the principal role of human rights to be that of protecting citizens against violations perpetrated by their own governments. Paradigm human rights violations are acts of mass atrocity perpetrated or orchestrated by official agents against a civilian population. The development of international human rights trials was heavily influenced by the Nuremberg trials, which prosecuted a small number of official agents for their role in masterminding a programme of genocide. The focus was on the momentous policy decision to implement “the final solution” and to orchestrate its logistics. When this model applied to violations of socio-economic rights, its purview is limited to cases in which the violation of a socio-economic right can be linked to arbitrary or discriminatory governmental conduct.4

This framing of the duty to respect the right to subsistence lacks both historical depth and geographical width. The inadequacy of confining responsibility for respecting the right to subsistence to right-holders’ own governments can be seen by considering features of global economic interaction that undermine the capacity of struggling democracies to fulfil this duty, that I discuss in section 3. (By analogy, in an affluent society in which some parents were deprived of any realistic chance of earning an income sufficient to purchase adequate food for their children, it would hardly be plausible to hold such parents solely accountable for violations of their children’s right to subsistence.)

3. Thomas Pogge’s institutional analysis

Thomas Pogge argues that there is a coercively imposed global institutional order, and that its rules engender most existing severe poverty. He argues that this constitutes a massive human rights violation and crime against humanity, and takes direct responsibility for this violation to lie with official agents of this global institutional order, who are responsible for the design of its rules:

> responsibility for decisions that foreseeable result in millions of avoidable deaths rests in the first instance with the politicians and negotiators who make them. Such...people have knowingly committed some of the largest human rights violations the world has ever seen. (Pogge 2005: 78-9).

This is a top-down model of responsibility for violations of the right to subsistence. Direct responsibility for the violation is confined to official agents of this global institutional order, on the ground that the ongoing patterns of global interaction that result in deprivations of subsistence
can be traced back to decisions these officials “knowingly” make, in their official capacity within an authoritative decision-making structure. Pogge draws a comparison between these decisions and the decision to implement “the final solution”. He takes the responsibility of individual agents to be to avoid collaborating in this violation, and draws a parallel with the responsibility of citizens in Nazi Germany to avoid collaborating in the genocide perpetrated by Nazi officials.

As has been widely argued, however, global social institutions lack the authoritative decision-making structure of domestic social institutions. The staff are generally highly motivated to make a contribution to development and the reduction of world poverty, but are hampered in their effort to translate this moral purpose into practical action in large part precisely because they lack authoritative decision-making powers to specify and coordinate global policies directed at ending severe poverty. In addition, Basu suggests that their grasp of the bigger picture, the overall impact of macroeconomic policies on global poverty, may be obstructed by complacent economic assumptions, or by a narrow focus on technically difficult calculations within their area of expertise (Basu 2011, pp. 12-14). Where it has become sufficiently clear that policies lead directly to subsistence deprivations, the IMF and World Bank have changed their policies.

Turning to decisions by individual governments, Saladin Meckled-Garcia argues that it is generally the case that these decisions do not in themselves inflict poverty on anyone. Accordingly, he argues, it is generally not possible to pinpoint specific policy decisions by official agents that are plausibly describable as inflicting severe poverty on anyone (Meckled-Garcia 2013).

Meckled-Garcia further argues that individual governments’ decisions to best promote their countries’ economic interests are not clearly unreasonable. He concludes that it is not possible to identify a directed wrong, parallel to that of enslavement, or of the decision to implement the final solution, which are the analogies to which Pogge appeals.

A second highly controversial aspect of Pogge’s argument is his empirical claim that most existing severe poverty is engendered by global social institutions. It has been widely argued that he exaggerates the role played by global social institutions and underestimates the role played by domestic factors.

A third contentious component of Pogge’s argument is his analysis of the negative duty correlative to the right to subsistence, as the duty not to collaborate, without compensation, in the coercive imposition of social
institutions under which there are deficits of reasonably secure access to the means of subsistence that could feasibly and reasonably be avoided under alternative social institutions. It is the duty “not to collaborate in upholding a coercive institutional order that avoidably restricts the freedom of some so as to render their access to basic necessities insecure without compensating by protecting its victims or working for its reform”. It has been widely argued that this duty is neither really negative or correlative.\textsuperscript{5} It fails to distinguish between cases in which global institutions actively contribute to severe poverty, and cases in which they fail to do enough to reduce or eliminate it.

Pogge himself argues that the term “under-fulfilment” of the right to subsistence may be more appropriate than “violation”. The worry, though, is that he ends up watering down the force of his original claim, that the operation of global institutional order constitutes a massive human rights violation and crime against humanity. Thus, while he starts out with the claim that the global institutional order is responsible for the infliction of most existing severe poverty, he then offers a philosophically contentious analysis of the negative duty correlative to the right to subsistence in light of which he concludes that the term “under-fulfilment” is more applicable.

However, it should be emphasised that most critics of Pogge’s argument agree with his rejection of the domestic poverty thesis. Thus, Meckled-Garcia concedes that it has “grotesque effects… in the form of life-threatening severe poverty.

As I now argue, the claim that severe poverty constitutes a human rights violation of the utmost gravity, along with many of Pogge’s core insights, can be defended without these controversial aspects of his argument. My argument takes the right to subsistence to impose both negative and positive correlative duties and clearly differentiates them. My focus here is the negative correlative duty not to deprive persons of the means of subsistence. This is robustly negative and straightforwardly correlative. Accordingly, non-fulfilment of this duty constitutes a violation (as opposed to under-fulfilment) of the right to subsistence. In addition, the special force of the negative duty not to actively deprive people of the means of subsistence (and thereby actively cause their physical deterioration or death) can be seen most clearly if it is sharply distinguished from the positive duty, to lift people out of severe poverty.

My argument relies only on the uncontroversial empirical claim that the root causes of severe poverty are not purely domestic, and is compatible with a multi-dimensional analysis of these causes. The key question is whether \textit{some} aspects of global economic structures contribute to severe poverty, and whether there are feasible reforms that would avoid this.
My argument does not single out official agents of a coercive global institutional order as the perpetrators of the violation and take the responsibility of individual agents to be to avoid collaborating in that violation. The notion of a structural violation shifts the moral focus to the ongoing patterns of behaviour themselves.

PART 2: SEVERE POVERTY AS A STRUCTURAL HUMAN RIGHTS VIOLATION

3. The structural underpinnings of severe poverty

Since severe poverty is embedded in enduring economic structures, an adequate analysis of it has to have historical depth, and also has to include the impact on future generations of resource depletion and environmental degradation. It has to include the lasting effects of colonialism and other historical injustice that enriched the North through the legal theft of natural and social resources from countries in the South. Insofar as affluent countries were enriched through the theft of natural and social resources from other countries, they owe some form of rectification to those other countries. It follows that some of the resources of affluent countries rightfully belong to other countries. Thus, ongoing failure to pay the rectification that is owed constitutes (currently legal) theft. Given that many of those countries lack the resources to secure the means of subsistence for all their citizens, this ongoing theft contributes to deprivations of the means of subsistence, and therefore has devastating consequences.

Pogge does discuss grievous historical injustice, but then sets it aside to focus on the more recent rules of global institutional order since decolonisation. However, the legacy of that historic theft is crucial to acknowledging the injustice of the present status quo. It poses a fundamental challenge to the moral legitimacy of existing schema of global property entitlements. As Daniel Butt argues, historic injustice is not simply a past event which members of former colonial powers can regret and dissociate ourselves from. Rather, our countries’ ongoing failure to pay rectification is an ongoing injustice in which we participate (Butt 2009).

The North was also enriched by a process of industrialisation that involved using up far more than an equitable share of fossil fuels and of the absorptive capacity of the Earth. Since both these resources are finite, the North has thereby deprived countries that have not yet fully industrialised of their share. Moreover the North is continuing to draw on an inordinate share of fossil fuels at an unsustainable rate in order to engage in luxury emissions, thereby rapidly depleting an increasingly scarce vital resource, access to the earth’s absorptive capacity, and is thereby
depriving current and future poor of access to even enough absorptive capacity for subsistence emissions. ⁸

Turning to other aspects of current global economic interaction, Steiner, Alston and Goodman note, certain aspects of the implementation of neo-liberal economic policies, “including privatization, deregulation, the expanded provision of incentives to entrepreneurial behaviour, and structural adjustment programs and related pressures from international financial institutions and developed countries – have had mixed, and sometimes seriously adverse, effects on the enjoyment of economic and social rights.” ⁹

One example is the impact of centralised neoliberal macroeconomic policies relating to property rights and free trade such as capital mobility, ensuring that firms can move themselves and their assets across national jurisdictions, in conjunction with decentralising and assigning to individual governments responsibility for redistributive tax policies and the protection of their citizens’ socio-economic human rights, and for regulating environmental and labour standards including of multinational firms operating within their jurisdiction. ¹⁰ In the absence of coordinated global policies regarding corporate taxes and environmental and labour standards, the governments of developing countries face a collective action problem leading to a race to the bottom regarding tax laws and environmental and labour standards, since it is in each national government’s interests to cut tax rates and lower these standards in order to encourage investment and reduce poverty. Domestic resource mobilisation in developing countries also severely hampered by illicit financial flows to tax havens and to richer countries, which alone exceed development aid.

4. An evolutionary analysis of the structures that underpin severe poverty.

I suggest that the most illuminating analysis of the patterns of behaviour that predictably result in subsistence deprivations is an evolutionary analysis, in terms of the selection and staying power of certain norms, and the striking absence of others. This explanation highlights the way in which the norms and rules that come to be selected and reinforced are those that serve the economic interests of powerful economic actors. It also highlights a marked absence of norms and of regulations and rules directed at protecting the basic interests of the global poor.

A pervasive feature of our contemporary social contexts is that many aspects of our lives are structured by complex bureaucratic organisations, which feature a complex division of labour. The culture of business organisations tends to conceive employees’ role responsibilities in terms of maximising share-holder profit. These business organisations are
therefore liable to oppose and resist the introduction of regulations that would restrict their profit. Governments take their principal mandate and role responsibility to be to maximise domestic economic growth (and so seek the best terms for trade, and so on.) These powerful economic agents tend to focus on pursuing their role responsibilities, conceived in terms of maximising the economic interests of those to whom they have special responsibilities (their shareholders, citizens, and so on), without taking personal responsibility for (or perhaps even giving much thought to) the bigger picture: the combined effect, in terms of severe poverty.

In conjunction with this, there is no global agency with an authoritative decision-making structure charged with regulating global economic interaction in a way that would avoid subsistence deprivations. Part of the official role of international economic institutions such as the World Bank is to promote economic development. Nevertheless, these institutions currently function principally as fora for agreements between states on trade tariffs or their removal, and they lack independent authoritative decision-making powers to introduce and enforce regulations to combat severe poverty. Their institutional mandate renders them accountable to their member states rather than the global poor specifically. Moreover, they are “widely perceived as a preserve of powerful and rich nations (Basu 2011, p. 191).

Against this background, powerful business organisations and the governments of affluent countries have a greater bargaining power in trade negotiations. They also have a greater influence on the formation of laws and regulations in international institutions, such as by diverting the agenda prior to the voting process; Kaushik Basu, recently chief economist of the World Bank, criticises the “greater access that the lobbies of rich countries have in the corridors of power in international organisations” (Basu 2011, p. 191). They are therefore in a strong position to oppose the introduction of legislation that would reduce their profit. By contrast, those who are economically marginalised and dispossessed little influence over the formation of policies and rules.

The upshot is that the norms and policies that come to be selected and reinforced tend to be those that promote the economic interests of powerful economic actors. By contrast, the norms and rules that represent and protect the interests of the global poor do not come to be selected. However, the devastating effects on the global poor generally cannot be attributed to specific laws, made knowingly and intentionally by official agents, that are in themselves plausibly describable as inflicting severe poverty. Rather, they emerge principally from legal loopholes and from the weakness of global political structures and the absence of coordinated
global rules that would regulate global economic interaction in a way that would protect against the subsistence deprivations.

As Kaushik Basu argues: Exploitation, conquest and property grabbing are alive and well. ... Just as the modern world tries to plug the loopholes of blatant exploitation ... human beings and governments discover newer and less obvious ways of exploiting... Whole nations, groups and masses of people are being continuously outwitted and impoverished... through complex financial manoeuvres, the discovery of loopholes in the law, and the new opportunities that economic globalization opens up and the lagging process of social and political globalisation leaves vulnerable to plunder.” (Basu p. 5)

On one level, the impact on the global poor can be seen as arising from rule by nobody. It is the combined effect of unwitting atomistic actions, and quotidian policy decisions in line with directives aimed at maximising economic growth, interests of share-holders and so on. It is generally not possible to attribute it to any particular individual or collective agent’s conscious decision to maximise profit regardless of the impact on the global poor, or to specific policies “knowingly” made and coercively imposed.

However, the evolutionary analysis of which norms emerge and which are absent highlights two salient features of them. First the prevalent norms and rules reflect a marked absence of attention to and concern for the combined effect on the global poor, and the absence of a concerted effort to implement coordinated global policies regulations compliance with which would prevent subsistence deprivations.

Second, the existing schema of role responsibilities that has emerged can itself be seen as constituting a moral loophole and a way of evading responsibility for subsistence deprivations. Sole responsibility for respecting socio-economic rights is held to lie with right-holders’ own governments. The international community is under a vaguely worded remedial responsibility to offer assistance, but does not acknowledge specific concrete legally binding duties. Nevertheless, there is recognition that the governments in many poor countries are unable to fulfil this duty for many of their citizens. Transferring sole responsibility to these governments at the time of decolonisation (and indeed in many cases as a condition for it) can be seen as a moral loophole by which to put an end to claims to a share of the riches of empire. Moreover, as we have seen, certain features of global economic structures can undermine governments’ capacity to respect their citizens’ socio-economic human rights (including the right to subsistence, and the right to adequate working conditions and an uncontaminated environment).
Saladin Meckled-Garcia infers that in the absence of a global agency with an authoritative decision making structure and the capacity to determine the rules for global economic interaction (such as Pogge’s argument presupposes), it is not possible to identify the “grotesque effects … in the form of life-threatening severe poverty” of current global economic interaction as a human rights violation.

I now argue, conversely, that we can delegate responsibility for the combined effect of our economic interactions, in terms of severe poverty, only if a coordinated global schema of regulations and duties compliance with which would avoid such poverty is in place, where a condition of being under a genuine duty is that the addressee is in a position to fulfil it. If such a schema is not in place, then the responsibility falls back on us to bring it about. Ongoing shared failure to have specified a coordinated global schema of duties and rules compliance with which would avoid the infliction of severe poverty, itself constitutes a structural violation.

I now argue that this failure is incompatible with genuine recognition of the right to subsistence.

5. An internal inconsistency argument

Adequate acknowledgement of a fundamental human right entails acknowledgement of the correlative duty to avoid depriving the right-holders of (or to provide them with) the object of the right, and recognising non-fulfilment of the duty as a human rights violation. The object of the human right to subsistence is reasonably secure access to the means of subsistence. Therefore, adequate acknowledgement of the human right to subsistence entails acknowledging the correlative negative duty not to deprive persons of, or jeopardise, their access to the means of subsistence.

There is widespread agreement that much severe poverty should be attributed to structures that actively deprive persons of or jeopardise their access the means of subsistence. Therefore, on the most philosophically uncontentious account of the negative duty correlative to the right to subsistence, this duty] is being violated on a vast scale. Genuine acknowledgement of a human right to subsistence entails classifying such behaviour as a human rights violation and prohibiting such treatment.

Moreover, there is also widespread agreement that the underlying structural causes of deprivations of subsistence are not plausibly confined to poor countries themselves. It follows that the international community shares some significant degree of responsibility for a large-scale violation of a fundamental human right. While the structural underpinnings of subsistence deprivations are immensely complex, this complexity should
not obscure the fact what the combined effects of the ongoing patterns of behaviour themselves do amount to is to deprive a vast number of the object of a widely affirmed fundamental human right. Therefore genuine acknowledgement of the right to subsistence entails acknowledging that this constitutes a human rights violation.

This analysis can therefore answer the challenge that Meckled-Garcia poses to Pogge of what could constitute the directed wrong, parallel to that of enslaving people. The directed wrong is that of depriving persons of the means of subsistence. This directed wrong cannot be seen if we confine our focus to specific actions or policy decisions. It can only be seen if we zoom out, and consider the combined effect. But when we do shift the focus to the combined effect, we can see that it amounts to actively depriving a vast number of the object of a fundamental human right, and thereby inflicting grievous harm.

Ongoing patterns of behaviour that predictably result in depriving a vast number of the means of subsistence can be analysed as structural violence in a literal sense: the structures are causing persons’ physical deterioration, the blighting of their lives, and likely premature death. This contrasts with the notion of structural injustice, analysed by Iris Marion Young. She conceives structural injustice as structures under which certain people are highly vulnerable to domination or to being subject to rights violations. A structural violation, by contrast, consists in structures that themselves predictably deprive persons of the object of a fundamental human right.

Genuine acknowledgement of a fundamental human right to subsistence entails implementing a schema of regulations and duties that ensures what Shue calls “universal coverage” of the right: for every person there is a corresponding addressee, under a duty to avoid depriving that person or, or provide them with, the means of subsistence, and in a position to fulfil that duty. Conversely, structures that fail to recognise as a violation behaviour that predictably deprives persons of the means of subsistence, and that fail to prohibit this harm, are fundamentally unjust.

One crucial role of fundamental human rights is to serve as a benchmark by which to assess whether existing legal systems themselves, along with prevalent moral codes, are minimally just. A classic example of this was the fundamental moral challenge that the right against slavery posed to moral norms and legal systems that sanctioned and legally enforced behaviour that should have been recognised as constituting a human rights violations. They were therefore flagrantly unjust. There is, however, also a subtler and more insidious way in which legal, economic and social structures can fail to recognise as fundamental human right: officially
acknowledging that right, but failing to identify as violation activities that predictably deprive persons of the object of the right, and thus failing to implement legislation that would restrict such activities so as to avoid the deprivations. Thus the legal loophole takes the form of subverting existing legislation resisting the introduction of legal reforms that put constraints on activities that predictably end up depriving persons of the object of the right, by failing to classify such activities as constituting a human rights violation. (This is likely to involve strategies such as obfuscation concerning the impact of the activities or claiming that further research is needed before concrete steps to introduce legislation in order to postpone this indefinitely.)

This structural violation can be analysed as what Paul Farmer calls “effacement” or “erasure” of those suffering severe poverty: There is no recognition, either in prevalent moral norms or in the law, that persons have been grievously wronged by human behaviour that predictably deprives them of the object of a fundamental human right and thereby blights or altogether destroys their lives.

6. The nature of the trade-off the patterns instantiate.

In analysing the notion of a human rights violation it is important both to retain the special and peremptory moral force of the concept and to avoid arbitrarily restricting the applicability of the notion to certain social contexts. With this in mind, I now offer an account of the sufficient conditions for constituting a human rights violation that is so morally minimal that rejection of them cannot be credibly held to be compatible with minimally adequate recognition of each person’s moral status, on any plausible analysis of the grounds of that moral status. (I should that this is only an analysis of a set of sufficient conditions for constituting a human rights violation; it is by no means offered as a set of necessary and sufficient conditions.) I then argue that global and domestic structures that result in deprivations of subsistence meet those conditions. I begin with the negative duties correlative to the right to subsistence.

6i. Sufficient conditions for constituting a human rights violation.

At the moral core of fundamental human rights is the claim that each person has moral status and can therefore morally demand not to be treated in ways that are fundamentally incompatible with minimally adequate recognition of that moral status. There is much debate over what grounds the universal moral status of persons, and what kinds of treatment are fundamentally incompatible with minimally adequate acknowledgement of that moral status. However, I take it to be uncontroversial that a sufficient condition for constituting such treatment is that the treatment
predictably, avoidably and unjustifiably inflicts extremely severe harms – harms liable to blight or destroy persons’ lives. Following Claudia Card, these kinds of harms can be termed “ruinous suffering”. The claim that the unjustifiable infliction of ruinous suffering constitutes a human rights violation is uncontroversial to the point of having an air of tautology.

The substantive debate, of course, concerns the question of what constitutes the unjustifiable infliction of ruinous suffering. Nevertheless, I also take it to be uncontentious that the infliction of severe harms is unjustifiable if the harms are foreseeable, could be avoided at a fairly moderate economic cost to every duty-bearer, and are not justified by any weighty countervailing moral considerations. Such is flagrantly incompatible with minimally adequate recognition of the moral value of the victims’ lives. Griffin appeals to the notion of “discarding” persons’ lives. This connotes destroying persons’ lives in a way that treats their lives as of no value – as merely disposable, like rubbish. Inflicting ruinous suffering or death, merely to avoid an economic cost, and moreover one that is not immoderate, amounts to the discarding of persons’ lives.

6ii. The structures that underpin severe poverty meet those conditions

If the foreseeable combined effect of certain aspects of the ongoing patterns of behaviour that emerge from complex large-scale global interaction is the infliction of extremely severe harms, and if there are feasible and feasibly achievable alternative social structures under which the harms could be avoided, without immoderate economic cost, then the sufficient conditions for constituting a human rights violation are met. The patterns of behaviour themselves constitute a structural violation, in virtue of the nature of the trade-offs these patterns instantiate: what their combined effect amounts to is the ongoing discarding of persons’ lives.

Let us now apply this to the structures that result in depriving people of the means of subsistence. First, it is clear that severe poverty blights or destroys the lives of billions of people each year. Second, it is also clear that much severe poverty should be attributed to global and domestic structures that predictably deprive persons of the means of subsistence. (although how responsibility for this should be divided between domestic and global factors is highly contentious). The third premise is that given the overall level of economic, social and technological global resources, it is well within our human capacity to avoid depriving anyone of the means of subsistence, without imposing an immoderate cost on any agent. The relevant capacity is what would be made possible under feasible alternative structures. The third premise, then, is that there are feasible structures that would avoid depriving persons of the means of subsistence. The fourth premise is that there are no countervailing weighty moral considerations
that might justify the infliction (or allowing) of this harm. Therefore the sufficient conditions for constituting a structural human rights violation are met.

This argument can be reinforced by considering that it is entailed by each of the two main accounts of human rights: the protection of persons’ basic interests against standard threats, and the official affirmation of each person’s moral status. Structural violations constitute an actual and ongoing threat to the basic interests of a vast number, and moreover one that could be avoided without immoderate cost. Those suffering severe poverty tend to be from the outset precluded from any realistic chance of a minimally decent life. Moreover, their vulnerability is compounded by the danger of being invisible to the agents who, together, unwittingly cause their plight.

Let us turn to the role of human rights of affirming persons’ universal moral status. Structural violations do not involve the intentional targeting of certain persons, or officially relegating them to an inferior moral and social status. However, the lives that end up blighted or destroyed as a predictable result of agents’ ongoing shared failure to have implemented laws that would prohibit this harm effectively do not count; as I have argued, they are discarded.

Again, the terms “effacement” and “erasure” are apt. Their lives are unjustifiably blighted or destroyed and yet there is no recognition either in prevalent moral norms or the law that they have been gravely wronged. Moreover, the absence of laws that prohibit the treatment that threatens to deprive of them of the object of a fundamental human right deprives them of the opportunity to be a plaintiff in court and demand that their claim be heard and acknowledged. The lives are blighted or destroyed not through being targeted, but because of the absence of attention to the combined effect on them of existing structures, and the absence of a concerted global effort to implement the structural reforms that would avoid subsistence deprivations.

Official acknowledgement of a category of structural violation plays a crucial role in combating this erasure. It brings moral and juridical scrutiny to bear on the devastating combined effects of ongoing patterns of behaviour, and on ways of restructuring those patterns so as to avoid the harm.

This provides a way of responding to another of Meckled-Garcia’s principal critiques of Pogge’s institutional model of severe poverty as a human rights violation. Meckled-Garcia argues, to recall, that it is not plausible to pinpoint any decision that constitutes a directed wrong,
understood as imposing an unreasonable trade-off between the agent’s aims and interests, and the aims and interests of others. If we apply this criterion to the combined effects themselves of the ongoing patterns of behaviour, we can see that the patterns instantiate a trade-off that is blatantly unreasonable, to the point of amounting to the discarding of others’ lives.

7. The relevant notion of liability

The principal juridical implication of recognition of a structural violation is that existing laws and norms themselves are fundamentally unjust insofar as they fail to adequately recognise a fundamental human right, and urgently demand reform as a condition on their moral legitimacy. The notion of liability that is of principal relevance here is that of shared liability to the economic costs of avoiding a human rights violation. A central aspect of the special moral force of fundamental human rights is that they are rightfully enforced, and one aspect of this is forward-looking: if A’s right is about to be violated, then A can rightfully demand fulfilment of the duty to avoid violating his or her right. If A has a right to X, then others (singly or jointly) are under a duty to avoid depriving A of X (or to provide A with X), and A can rightfully peremptorily insist that they fulfil this duty, through juridical enforcement if necessary. Thus if the legal structures are minimally just, A should be able to seek juridical enforcement of this duty. The right to subsistence poses a deep challenge to moral legitimacy of existing structures of power, insofar as they fail to recognise as a violation behaviour that predictably deprives persons of the means of subsistence, and fail to prohibit this violation by specifying and enforcing a concrete schema of duties of regulations compliance with which avoid subsistence deprivations.

Agents who participate in this structural violation are under a shared duty of basic justice to implement the structural reforms needed to end it, and this shared duty is underpinned by the abstract duty of justice, which is held by all and owed to all, not to discard persons’ lives. By the term “shared duty”, I mean a duty that is held by individual agents, but each agent has only partial responsibility for its fulfilment. The capacity that is relevant to fulfilment of a shared duty is what the agents could achieve together, in this case through the introduction of regulations (or the reform of existing ones) that restructured agents’ behaviour in ways directed at avoiding severe poverty. While social institutions play an essential practical role in the adequate implementation of this duty, the fundamental duty-bearers are individual agents.
It is beyond the scope of this paper to discuss the nature of this shared duty to implement structural reform, but I finally wish to briefly emphasise that has all four features of traditional perfect general duties of justice. First, the content of the shared duty is both determinate and correlative: to avoid depriving persons of (or provide them with) the means of subsistence. There are indefinitely many ways in which fulfilment of this duty could be achieved, but they each constitute a different way of realising the same overarching shared duty, to avoid subsistence deprivations. Second, fulfilment of this duty is at least as urgent as traditional perfect negative duties. Ongoing shared failure to fulfil it result in the ongoing unjustifiable blighting or destruction of persons’ lives. Third, it is owed to every human being, simply in virtue of their moral status as persons; as I have argued, failure to fulfil it is incompatible with minimally adequate recognition of the moral value of persons’ lives. Fourth, it is rightfully enforced, and indeed its enforcement is a condition on the moral legitimacy of legal structures.

I finally note some ways in which this analysis echoes and develops some important recent moves in international legal theory. Hilary Charlesworth has criticised what she calls the “crisis model” of international law. It tends to be preoccupied with great crises that constitute dramatic, egregious deviations from the status quo. For this reason, she argues, it tends to focus on gross physical violations, and to offer a narrow and truncated understanding of them which focuses on a snapshot in time, and fails to acknowledge their historic and structural roots. It tends to avoid analysis of persistent patterns and longer-term trends and to downgrade socio-economic rights given the quotidian nature of their violation.

As I have argued, an analysis of structural violations has to have historical depth and has to include the impact on future generations of current economic practices. Moreover, the term “violation” (as opposed to structural “injustice”) indicates that the status quo is morally intolerable and urgently demands reform; the persistence of severe poverty is a violation which demands abolition as a matter of the utmost moral urgency and as a condition on the minimal moral legitimacy of social, economic political and legal structures.

Jennifer Martinez argues that an examination of the role played by international courts in the abolition of slavery suggests we need to broaden our analysis of human rights violations beyond the Nuremberg narrative, which “conveniently attributes responsibility for the Holocaust to a handful of individuals.” She points out that “an understanding of int HRs laws that begins with the antislavery movement places a much greater emphasis on nonstate actors – both the slave traders who were
the human rights violators and the civil society leaders of the abolitionist movements in various countries” (Martinez 2008, 632), and suggests that we broaden the focus of the narrative to include relations between citizens of more developed and less developed countries (Martinez 2008, 634). As I have suggested, many of the criticisms of Pogge’s argument arise from his attempt to trace the infliction of severe poverty to momentous policy decisions knowingly made by official agents of a coercive global institutional order. I hope to have shown that the infliction of severe poverty constitutes a structural violations, liability for which (in a pro-active sense) is extremely broadly shared; the abstract universal duty of basic justice not to discard persons’ lives imposes on citizens of affluent countries a shared duty of basic justice to implement the structural reforms that would abolish the allowing and infliction of severe poverty.

Department of Philosophy
University of St Andrews
KY15 9AL
Scotland
ea10@st-andrews.ac.uk
1 As Allen Buchanan argues, racial segregation laws constituted a human rights violation in virtue of their official denial of some persons’ equal moral standing, even if they did not in themselves undermine those persons’ essential interests.


5 For example, Alan Patten, 2005; Tan 2010; Hayward 2008.

6 In the case of depletion of fossil fuels, the compensation should include offsetting cost of transition to clean energy; see, for example, Henry Shue, *Climate Justice: Vulnerability and Protection* (Oxford: Oxford University Press, 2014).

7 Of course, the latter will run out much sooner than the former.


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